

**Introduced by Committee on Banking, Finance and Insurance
(Senators Speier (Chair), Cox, Denham, Figueroa,
Hollingsworth, Maldonado, Murray, Ortiz, and Scott)**

March 1, 2005

An act to amend Sections 1872.83, 1874.1, and 1877.1 of the Insurance Code, relating to insurance fraud.

LEGISLATIVE COUNSEL'S DIGEST

SB 1105, as introduced, Committee on Banking, Finance and Insurance. Insurance fraud: chiropractors.

Existing law requires the Insurance Commissioner to ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud and forwards to the appropriate disciplinary body the names of individuals, licensed as specified, who are suspected of engaging in fraudulent activity.

This bill would include persons who are licensed under the Chiropractic Initiative Act in these provisions.

Existing law requires an insurer or other specified person, upon written request of an authorized governmental agency, to release to the agency certain information in connection with motor vehicle theft, motor vehicle insurance fraud, or workers' compensation insurance fraud. Existing law defines "authorized governmental agency" for these purposes.

This bill would include any licensing agency governed by the Chiropractic Initiative Act in the definition of authorized governmental agency.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code *or the Chiropractic Initiative Act* who are suspected of actively engaging in fraudulent activity. The Bureau of Fraudulent Claims shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, and of willful failure to secure payment of workers' compensation, in violation of Section 3700.5 of the Labor Code, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive

1 their actual and necessary traveling expenses incurred in the
2 performance of commission duties. Payment of per diem and
3 travel expenses shall be made from the Workers' Compensation
4 Fraud Account in the Insurance Fund, established in paragraph
5 (4), upon appropriation by the Legislature.

6 (2) In determining the aggregate amount of the assessment, the
7 Fraud Assessment Commission shall consider the advice and
8 recommendations of the Bureau of Fraudulent Claims and the
9 commissioner.

10 (3) The aggregate amount of the assessment shall be collected
11 by the Director of Industrial Relations pursuant to Section 62.6 of
12 the Labor Code. The Fraud Assessment Commission shall
13 annually advise the Director of Industrial Relations, not later than
14 March 15, of the aggregate amount to be assessed for the next
15 fiscal year.

16 (4) The amount collected, together with the fines collected for
17 violations of the unlawful acts specified in Sections 1871.4,
18 11760, and 11880, Section 3700.5 of the Labor Code, and
19 Section 549 of the Penal Code, shall be deposited in the
20 Workers' Compensation Fraud Account in the Insurance Fund,
21 which is hereby created, and may be used, upon appropriation by
22 the Legislature, only for enhanced investigation and prosecution
23 of workers' compensation fraud and of willful failure to secure
24 payment of workers' compensation as provided in this section.

25 (c) For each fiscal year, the total amount of revenues derived
26 from the assessment pursuant to subdivision (b) shall, together
27 with amounts collected pursuant to fines imposed for unlawful
28 acts described in Sections 1871.4, 11760, and 11880, Section
29 3700.5 of the Labor Code, and Section 549 of the Penal Code,
30 not be less than three million dollars (\$3,000,000). Any funds
31 appropriated by the Legislature pursuant to subdivision (b) that
32 are not expended in the fiscal year for which they have been
33 appropriated, and that have not been allocated under subdivision
34 (f), shall be applied to satisfy for the immediately following
35 fiscal year the minimum total amount required by this
36 subdivision. In no case may that money be transferred to the
37 General Fund.

38 (d) After incidental expenses, at least 40 percent of the funds
39 to be used for the purposes of this section shall be provided to the
40 Bureau of Fraudulent Claims of the Department of Insurance for

1 enhanced investigative efforts, and at least 40 percent of the
2 funds shall be distributed to district attorneys, pursuant to a
3 determination by the commissioner with the advice and consent
4 of the bureau and the Fraud Assessment Commission, as to the
5 most effective distribution of moneys for purposes of the
6 investigation and prosecution of workers' compensation fraud
7 cases and cases relating to the willful failure to secure the
8 payment of workers' compensation. Each district attorney
9 seeking a portion of the funds shall submit to the commissioner
10 an application setting forth in detail the proposed use of any
11 funds provided. A district attorney receiving funds pursuant to
12 this subdivision shall submit an annual report to the
13 commissioner with respect to the success of his or her efforts.
14 Upon receipt, the commissioner shall provide copies to the
15 bureau and the Fraud Assessment Commission of any
16 application, annual report, or other documents with respect to the
17 allocation of money pursuant to this subdivision. Both the
18 application for moneys and the distribution of moneys shall be
19 public documents. Information submitted to the commissioner
20 pursuant to this section concerning criminal investigations,
21 whether active or inactive, shall be confidential.

22 (e) If a district attorney is determined by the commissioner to
23 be unable or unwilling to investigate and prosecute workers'
24 compensation fraud claims or claims relating to the willful failure
25 to secure the payment of workers' compensation, the
26 commissioner shall discontinue distribution of funds allocated for
27 that county and may redistribute those funds according to this
28 subdivision.

29 (1) The commissioner shall promptly determine whether any
30 other county could assert jurisdiction to prosecute the fraud
31 claims or claims relating to the willful failure to secure the
32 payment of workers' compensation that would have been brought
33 in the nonparticipating county, and if so, the commissioner may
34 award funds to conduct the prosecutions redirected pursuant to
35 this subdivision. These funds may be in addition to any other
36 fraud prosecution funds or claims relating to the willful failure to
37 secure the payment of workers' compensation prosecution
38 otherwise awarded under this section. Any district attorney
39 receiving funds pursuant to this subdivision shall first agree that
40 the funds shall be used solely for investigating and prosecuting

those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) A county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud or the willful failure to secure the payment of workers' compensation shall not become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Bureau of Fraudulent Claims does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys

1 pursuant to a determination by the commissioner in accordance
2 with the same procedures set forth in subdivision (d).

3 (g) The commissioner shall adopt rules and regulations to
4 implement this section in accordance with the rulemaking
5 provisions of the Administrative Procedure Act (Chapter 3.5
6 (commencing with Section 11340) of Part 1 of Division 3 of Title
7 2 of the Government Code). Included in the rules and regulations
8 shall be the criteria for redistributing funds to district attorneys
9 and the Attorney General. The adoption of the rules and
10 regulations shall be deemed to be an emergency and necessary
11 for the immediate preservation of the public peace, health, and
12 safety, or general welfare.

13 (h) The department shall report on an annual basis to the
14 Legislature and the Fraud Assessment Commission on the
15 activities of the Bureau of Fraudulent Claims and district
16 attorneys supported by the funds provided by this section.

17 The annual report shall include, but is not limited to, all of the
18 following information for the department and each district
19 attorney's office:

20 (1) All allocations, distributions, and expenditures of funds.

21 (2) The number of search warrants issued.

22 (3) The number of arrests and prosecutions, and the aggregate
23 number of parties involved in each.

24 (4) The number of convictions and the names of all convicted
25 fraud perpetrators.

26 (5) The estimated value of all assets frozen, penalties assessed,
27 and restitutions made for each conviction.

28 (6) Any additional items necessary to fully inform the Fraud
29 Assessment Commission and the Legislature of the
30 fraud-fighting efforts financed through this section.

31 (i) In order to meet the requirements of subdivision (g), the
32 department shall submit a biannual information request to those
33 district attorneys who have applied for and received funding
34 through the annual assessment process under this section.

35 (j) Assessments levied or collected to fight workers'
36 compensation fraud and insurance fraud are not taxes. Those
37 funds are entrusted to the state to fight fraud and the willful
38 failure to secure the payment of workers' compensation by
39 funding state and local investigation and prosecution efforts.
40 Accordingly, any funds resulting from assessments, fees,

1 penalties, fines, restitution, or recovery of costs of investigation
2 and prosecution deposited in the Insurance Fund shall not be
3 deemed “unexpended” funds for any purpose and, if remaining in
4 that account at the end of any fiscal year, shall be applied as
5 provided in subdivision (f) and to offset or augment subsequent
6 years’ program funding.

7 (k) The Bureau of State Audits shall evaluate the effectiveness
8 of the efforts of the Fraud Assessment Commission, the Bureau
9 of Fraudulent Claims, the Department of Insurance, and the
10 Department of Industrial Relations, as well as local law
11 enforcement agencies, including district attorneys, in identifying,
12 investigating, and prosecuting workers’ compensation fraud and
13 the willful failure to secure payment of workers’ compensation.
14 The report shall specifically identify areas of deficiencies.
15 Included in this report shall be recommendations on whether the
16 current program provides the appropriate levels of accountability
17 for those responsible for the allocation and expenditure of funds
18 raised from the assessment provided in this section. The Bureau
19 of State Audits shall submit a report to the Chairperson of the
20 Senate Committee on Labor and Industrial Relations and the
21 Chairperson of the Assembly Committee on Insurance on or
22 before May 1, 2004.

23 SEC. 2. Section 1874.1 of the Insurance Code is amended to
24 read:

25 1874.1. The following definitions govern the construction of
26 this article, unless the context requires otherwise:

27 (a) “Authorized governmental agency” means the Department
28 of the California Highway Patrol, the Department of Insurance,
29 the Department of Justice, the Department of Motor Vehicles, the
30 police department of a city, or a city and county, the sheriff’s
31 office or department of a county, a law enforcement agency of
32 the federal government, the district attorney of any county, or
33 city and county, and any licensing agency governed by the
34 Business and Professions Code *or the Chiropractic Initiative Act*.

35 (b) “Relevant” means having a tendency to make the existence
36 of any fact that is of consequence to the investigation or
37 determination of an issue more probable or less probable than it
38 would be without the information.

1 (c) Information shall be deemed important if, within the sole
2 discretion of the authorized governmental agency, that
3 information is requested by that authorized governmental agency.

4 (d) “Insurer” means the automobile assigned risk plan
5 established pursuant to Section 11620 of the Insurance Code, as
6 well as any insurer writing insurance for motor vehicles or
7 otherwise liable for any loss due to motor vehicle theft or motor
8 vehicle insurance fraud.

9 (e) “Motor vehicle” means motor vehicle as defined in Section
10 415 of the Vehicle Code.

11 SEC. 3. Section 1877.1 of the Insurance Code is amended to
12 read:

13 1877.1. The following definitions govern the construction of
14 this article, unless the context requires otherwise:

15 (a) “Authorized governmental agency” means the district
16 attorney of any county, any city attorney whose duties include
17 criminal prosecutions, any law enforcement agency investigating
18 workers’ compensation fraud, the office of the Attorney General,
19 the Department of Insurance, the Department of Industrial
20 Relations, the Employment Development Department, the
21 Department of Corrections, and any licensing agency governed
22 by the Business and Professions Code *or the Chiropractic*
23 *Initiative Act*.

24 (b) “Relevant” means having a tendency to make the existence
25 of any fact that is of consequence to the investigation or
26 determination of an issue more probable or less probable than it
27 would be without the information.

28 (c) “Insurer” means an insurer admitted to transact workers’
29 compensation insurance in this state, the State Compensation
30 Insurance Fund, an employer that has secured a certificate of
31 consent to self-insure pursuant to subdivision (b) or (c) of
32 Section 3700 of the Labor Code, or a third-party administrator
33 that has secured a certificate pursuant to Section 3702.1 of the
34 Labor Code.

35 (d) “Licensed rating organization” means a rating organization
36 licensed by the Insurance Commissioner pursuant to Section
37 11750.1.

38 (e) Information shall be deemed important if, within the sole
39 discretion of the authorized governmental agency, that
40 information is requested by that authorized governmental agency.

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